IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.29075 OF 2003
AND CRL.OP.NO. 29076 OF 2003
AND
CRL.M.P.Nos.8025 & 8026 OF 2003.

Sivanthiappan ..Petitioner in CrlOP.29075/2003

1.Madurai Ganesan
2.Alagusundram
3.Ganesamoorthy
4.Veera.Ilavarasan
5.Boominathan
6.P.S.Maniam
7.Sivanthiappan
8.Nagarajan ..Petitioners in CrlOP.29076/2003

-Vs-

The State of Tamil Nadu,
represented by the
Deputy Superintendent of Police,
`Q' Branch CID.,
Kalaimagal Nagar,
Madurai-625 017. ..Respondents in both the CrlOPs.

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioners in : Mr.K.S.Dhinakar and
in both Crl.OPs. Mr.G.Nanmaran

For respondent : Mr.N.R.Chandran,
Advocate General and
Mr.I.Subramaniyan
Public Prosecutor,
High Court, Madras
assisted by Mr.Jayakumar,
Addl.Public Prosecutor

:COMMON ORDER

The petitioners are A.2 to A.9 in Special C.C.No.1 of 2003 on the file of the Special Court under the Prevention of Terrorism Act, Poonamallee, Chennai. In the above criminal original petition No.29075 of 2003 the petitioner/A.8 would pray to call for the records relating to the recording of the evidence of P.W.1 on 21.8.2003 in the said case and quash the same. In the second criminal original petition No.29076 of 2003, the petitioners/A.2 to A.9 would pray to call for the records relating to Crl.M.P.No.68 of 2003 in Special C.C.No.1 of 200 3 and direct the Special Court under Prevention of Terrorism Act at Poonamallee, Chennai to consider and dispose the same and thereafter proceed with the examination of witnesses in the said case.

2. On a perusal of the materials placed on record, it comes to be known that the petitioners are A.2 to A.9 in Special C.C.No.1 of 2003 on the file of the Special Court under the Prevention of Terrorism Act at Poonamallee, Chennai, for the offences punishable under Sections 21(2)(a) and (4) of the Prevention of Terrorism Act, 2002 (hereinafter referred to as POTA) against A.4 to A.8 and under Section 21(3)(4) of POTA against A.1 to A.3. It further comes to be known that they have all filed Crl.M.P.Nos.23 to 25 of 2003 under Section 227 Cr.P.C. praying to discharge them from the cr iminal proceedings but the same have been dismissed on 15.7.2003 by the Special Court and after dismissing the said discharge petitions, they have preferred Criminal Appeal Nos.1224 to 1226 of 2003 respectively under Section 34 of the POTA, which were admitted by the Division Bench of this Court on 18.8.20 03.

3. In the first criminal original petition, the petitioner/A.8 would submit that he was produced before the Special Court on 25.7.2003 from Central Prison, Madurai and the learned Judge framed the charges and fixed 21.8.2003 as the date for the examination of witnesses; that on 20.8.2003, he suffered from diarrhoea and was admitted as inpatient in the Prison Hospital, Madurai and therefore he could not be produced before the Court and since even his counsel did not have instructions, he could not file any petition under Section 317 Cr.P.C. and the learned Judge, even though no petition under Section 317 Cr.P.C. was filed and the counsel on record reported no instruction from the petitioner, the learned Judge proceeded with the examination of the P.W.1 on 21.8.2003 informing the counsel that Section 273 empowers to proceed with trial in the absence of the accused. The petitioner, branding the said act of the learned Judge as illegal, has come forward to file the above petition. The petitioner would further submit that as per Section 29(5) of POTA, if the trial Court thinks it, for reasons to be recorded, can record the evidence in the absence of the accused or his pleader; that on 21.8.2003, the counsel who entered their appearance at the pre-trial stage reported the court that they have no instruction which amounts that the counsel no more represented the accused for which the memo. of appearance was filed earlier and therefore the counsel on record could not be the pleader of the accused, the moment no instruction was reported; that the presence of the same counsel as counsel to some other accused could not be treated as appearance for the absentee accused also; that no provision of law empowers the trial court to proceed with the trial in the absence of the accused and his counsel.

4. The petitioner would further submit that the right to be represented by a counsel in criminal proceedings is a valuable right and is not a mere formality; that unless the counsel becomes a substitute with specific instruction to participate in the trial as the representative of the accused when the accused could not make his presence, the counsel's mere presence in the court premises at the time of trial cannot be taken as representative of the accused and the trial Court cannot compel the counsel to represent or be present in the court for and on behalf of the accused for the purpose of trial; that Section 2 9(5) of the Act empowers the trial Court to examine the witness in the absence of the accused or the advocate; that since he is very much in the judicial custody, he could not be treated an absconder and therefore the examination of witness commenced on 21.8.2003 in the absence of the accused, cannot be valid for any reason but could be only an abuse of process of law; that as per Section 4 Cr.P.C., all offences under any other law subject to the special law, the Code of Criminal Procedure would have application and since Section 29(5) requires for presence of either the accused or the pleader when both are absent, the Cr.P.C. has to be followed. Further extracting Section 273 Cr.P.C. and submitting that the act of the trial Judge in recording the evidence of P.W.1 in the absence of the petitioner as illegal, the petitioner would pray for the relief extracted supra.

5. The case of the petitioners in Crl.O.P.Nos.29076 of 2003 is that their period of one year judicial custody expired on 8.7.2003; that on 20.8.2003, they have filed their bail petition before the Special Court in Crl.M.P.No.68 of 2003 and the same was posted on 21.8.2003, which was the date fixed for commencement o f trial; that the Special Public Prosecutor took notice on the said bail petition and wanted ten days time for filing the counter and the learned Judge, in spite of the objection for the grant of longer time for filing counter, when the fact remains that the petitioners are in judicial custody for more than 14 months has granted the adjournment.

6. The petitioners would further submit that they are in judicial custody and find it very difficult to give instruction to their respective counsel for the effective cross-examination; that one cannot lose sight of the fact that the stage which is most important in criminal proceedings is the time when prosecution witnesses are actually in the box giving evidence; that the evidence then recorded is the substantive evidence, which would be relied upon by courts for final adjudication; that the charge in the instant case is not trivial one, but, which, if proved, would be brought within the category of `rarest of rare case' as being a terrorist act calling for longer punishment; that the giving of effective instruction the counsel for accused at this stage in the case of this nature, could not be brushed aside; that the counsel have to cross-examine the witnesses, not going through the script of the chief examination but require the instruction from the accused for clue regarding the truth or falsity of each portion of the evidence given by the witness; that for the fair trial, the free and timely instruction can be given only the accused are enlarged on bail and therefore early hearing of the bail petition, prior to the commencement of cross-examination is absolutely necessary to secure the ends of justice.

7. The petitioners would further submit that the procedural fairness required by Article 21 of the Constitution of India includes the right to a speedy trial to be observed at every stage particularly in the

disposal of the bail petition, as the personal liberty of the petitioners are curtailed; that the delay in the disposal of the bail application is not on the part of the petitioners and the counsel for the petitioner who filed the bail petition are ready and willing to argue the bail application at any time fixed by the trial Court prior to the cross-examination; that the petitioners cannot be deprived of their right to ask for the bail and delaying the disposal of the bail application and hasty examination of witnesses are nothing but abuse of process of the Court. On such grounds, the petitioners would pray for the relief extracted supra.

8. During arguments, the learned counsel for the petitioners besides laying emphasis on the facts of the case, would further submit that from a perusal of Section 273 Cr.P.C. it is clear that it mandates that the examination of any witness should be only in the presence of the accused; that the only exception which come within the ambit of words Only when the witness is examined in the presence of accused, he can observe the demeanour of the witness; that the accused would be able to instruct his pleader immediately and thus the cross examination of the witness would be effective. Therefore the examination of P.W.1 on 21.8.2003 behind the back of the accused is illegal

9. From the perusal it is clear that Section 273 Cr.P.C. Mandates that the examination of any witness should be only in the presence of the accused. The only exceptions which come within the ambit of words Only when the witness is examined in the presence of accused, he can observe the witness demeanour. The accused would be able to instruct his pleader immediately and thus the cross examination of the witness is as effective. Therefore the examination of P.W.1 on 21.8.2003 behind the back of the accused is illegal.

10. The counsel for the petitioner further states that as per Section 29(5) of POTA, if the trial court thinks fit for reason to be recorded the trial court can record the evidence in the absence of accused or his pleader; that on 21.8.2003, the counsel who entered their appearance in the pre-trial stage reported the court that they have no instruction; that when a counsel on record reports no instruction, it would amount that the said counsel is no more representing the accused for which the memo of appearance filed earlier and therefore, the counsel on record cannot be pleader to the accused from the moment no instruction is reported; that no provision of law empowers the trial court to proceed with the trial court to proceed with trial in the absence of accused and his counsel; that to invoke Section 29(5) of POTA, the trial court has to record the reasons in writing; that the absence of the petitioner who was hospitali zed for ill health cannot be taken as a delaying tactics; that the petitioners are in jail for the past 14 months; therefore, the absence of A.8 on 21.8.2003 cannot be treated as wilful refusal to appear in the court; that Unless the court concludes that the absence of the accused is wanton, it cannot record any reason for proceeding with trial in the absence of the accused; that section 29(5) empowers the trial court to examine the witness in the absence of the accused or the advocate; that the petitioners are very much in the judicial custody and therefore the petitioners are not absconders and therefore, the examination of witness commenced on 21.8.2003 in the absence of the accused is an abuse of process of

law.

11. The counsel for the petitioner states that as per Section 317 Cr.P.C., accused should have to plead to condone his absence through his counsel by filing a petition. In the absence of any petition, the trial court cannot suo motu dispense with the personal attendance of the accused and examine the witnesses.

12. The counsel for the petitioner states that Article 21 of the Constitution of India guarantees fair trial to the accused persons. Article 21 guarantees the preservation of basic rights of every citizen. When the petitioner is ill and could not be present before the trial court, the trial court should have exercised its discretion only in favour of the accused and not in favour of the prosecution.

13. The Learned counsel for the petitioner would also rely on the judgment reported in 1987 LW (Crl)419 (SUDARSANAM AND TWO OTHERS vs. STATE, DEPUTY SUPERINTENDENT OF POLICE, PONNERI DIVISION) wherein in a case under Section 302 r/w. llied Sections, when a request for adjournment on the ground of accused wanting to engage another counsel, due to illness of the previous counsel, was sought for, the learned sessions Judge refused the same and in such circumstances, a learned single Judge of this Court has held:

"The trial court in such situations, has first to decide, whether factually, the prayer of the accused that the counsel has suddenly taken ill, is true or whether it is only an attempt to get an adjournment to protract the proceedings. If the Court feels that factually, the statement that the counsel has suddenly taken ill, is true and if the court finds, that ever thereafter, the accused has taken every steps within his powers, to engage another counsel and despite the same he had not succeeded and was forced to pray for an adjournment, the court has to give an adjournment."

"We cannot lose sight of the fact that, the stage which is most important to an accused in the entire criminal proceedings, is the time, when the prosecution witnesses are actually in the box giving evidence. The evidence then recorded, is the substantive evidence, which would be relied upon by Courts for final adjudication."

"The presence of a counsel for the accused, at the stage of the chief-examination, in a case of this nature, could not be brushed aside as redundant. The counsel has to cross-examine witnesses, not by going through the script of the chief-examination recorded in his absence, but by seeing the witnesses actually deposing the chief. If under S.280 Cr.P.C., the demeanor of a witness could be relevant to a trial Judge, who is empowered to make a record of it, so that even the appellate courts can have the benefits of the impression that the witness had produced on the trial Judge, certainly the demeanor of a witness, would give the cross-examining counsel his clue regarding the truth or falsity of each portion of the evidence given by the witness in the chief-examination. The look or manner of a witness, his hesitation, his doubts, his apparent reluctance or evasive attitude, would all be meaningful to a counsel, who proposes to cross-examine a witness. It is no justice to record the chief-examination of twelve witnesses, in a case of capital sentence, when the accused are undefended and then tender the witnesses for cross-examination."

14. Then, the learned counsel would read out Section 299 Cr.P.C. which reads as follows:

"Sec.299 Record of evidence in absence of accused: If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial, such person for the offence complained of may, in his absence, examine the witness (if any) produced on behalf of the prosecution and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case, would be unreasonable."

If the accused is called for and he is ill and he could not be produced for evidence, it is not applicable at this juncture.

15. Regarding the second criminal original petition above, the learned counsel for the petitioners would further submit that on 20.8.2003 , the bail application was filed; that the petitioners are in custody for more than one year; that charge-sheet was filed and on each day, five witnesses have to be examined and they are ready on 21.8.2003; that the learned Public Prosecutor has taken ten days time to file counter; that one of the fundamental right is right of liberty; that for taking notice, the respondent should be given time to take notice, but not ten days time and therefore the bail application has to be decided first before they proceed with the examination of the witnesses and dispose if of. On such arguments, the learned counsel for the petitioners would pray for the reliefs extracted in both the petitions.

16. On the contrary, Mr.N.R.Chandran, the learned Advocate General appearing for the respondent would submit that some of the persons were detained under POTA and they moved bail, but Mr.Vaiko, who is also the accused in the case, did not move any bail petition; that on 21.8 .2003, the examination of the witnesses started and one Police Officer was examined as P.W.1 in chief; that suddenly, there was some sort of non-cooperation from the side of the accused and they made attempts to stall the proceedings and for some reasons, the learned Special Judge, found not to cross-examine the witness on the same day.

17. The learned Advocate General would further submit that the counsel for A.8, who is the petitioner in the first petition above, has reported no instructions; that the cross-examination of P.W.1 was deferred; that similarly, on 25.8.2003, three witnesses were examined; that two detailed orders were passed by the learned Special Judge on 21.8.2003 and 25.8.2003; that a memo. was filed before the learned Judge to the effect that the cross-examination of the witness would be conducted by the defence from 1.9.2003 onwards; that the learned counsel for the A.8 also reported no instructions and said that he will engage a new counsel and the counsel for the accused changed and he said that he will co-operate and requested to fix a

time schedule; that on the memo. filed, consensus was reached between the counsel and the Court and the counsel's agreed that on Monday, Tuesday and Wednesday, the examination in chief and cross would be conducted; that the accused canot say that since the bail is not granted, the trial cannot go on; that the cross-examination and grant of bail are totally different; that under POTA, there is an exception to the general rule and it provides the possibility to record evidence in the absence of the accused with the liberty to recall; that the accused are not fair to the Court and therefore, they cannot invoke the powers conferred under section 482 Cr.P.C. The learned Advocate General would draw the attention of this Court to the order passed by the learned Judge on 26.8.2 003.

18. The learned Advocate General would submit that if there is any inconvenience, the petitioners should approach this Court and make a request; that from 1.9.2003 onwards, there is no problem to crossexamine those persons whose chief examination was completed; that the contention of A.8 is that the evidence recorded in chief has no evidentiary value because it was done in his absence and has to be erased and afresh the witness has to be examined in chief and then his counsel would cross-examine; that when the witness was examined, the counsel for A.8 was present and there is no injustice done to the accused since the evidence is very well available on record and making use of the same, he can continue the cross-examination.

19. Then, the learned Public Prosecutor, continuing to argue on behalf of the respondent, would refer to Page No.8 of the affidavit in Crl.O.P.No.29075 of 2003 wherein the petitioner has prayed to call for the records relating to the recording of the evidence of P.W.1 on 21.8.2003 and quash the same and would submit that in this case, the contention of the petitioner/A.9 is that the evidence must be recorded in the presence of the accused; that in this case, there are number of accused who are facing joint trial and that on 21.8.2003, P.W.1, the former witness, who is the Inspector of Police, has been examined to mark the complaint; that the accused counsel filed their memo. of appearance on that particular day when the chief-examination is over; that four counsel, who are appearing for the accused, were present there and they suddenly said that they have no instructions to crossexamine and therefore the counsel withdraw the instructions and on that basis, the learned Judge adjourned the case for cross-examination on 25.8.2003. The learned Public Prosecutor would submit that the accused can cross-examine the witness and the trial can go on and would pray to dismiss both the above criminal original petitions.

20. In clarification, the learned counsel for the petitioners would submit that the evidence has not been recorded in the manner known to law and the main question is that whether the court has right to examine witness in the absence of the accused and for this, the learned Public Prosecutor would submit that this case is recording of evidence in the presence of the counsel and he would conclude his arguments, reading out Section 31 of the POTA, which reads as follows:

"The trial under this Act or any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other

court (not being a special court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance."

21. For the sake of convenience and easy reference, Crl.O.P.No.2907 5 of 2003 is referred to as the first petition above and Crl.O.P.No.2 9076 of 2003 is referred to as the second petition above.

22. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners and the learned Advocate General and the Public Prosecutor, High Court, Madras, what transpires in the filing of the above two criminal original petitions before this Court on the part of the petitioners is that the first criminal original petition No.29075 of 200 3 above has been filed by the 8th accused seeking to call for the records relating to the evidence of P.W.1 recorded on 21.8.2003 in Spl. C.C.No.1 of 2003 and quash the same and in the second criminal original petition No.29076 of 2003, the petitioners therein, who are the accused No.2 to 9, would pray to direct the Special Court under POTA to consider and dispose of the Crl.M.P.No.68 of 2003 in Spl.C.C.No.1/200 3 on the file of the Special Court of POTA and thereafter proceed with the examination of witnesses in the said case.

23. On facts, what comes to be known is that in the first criminal original petition above, the petitioner therein/A.8 would plead that on 25.7.2003, the said Special Court framed the charges and posted the case on 21.8.2003 for the examination of the witnesses and since on 20.8.2003, he got admitted in the Prison Hospital at Madurai Central Prison on account of ill-health, he could not be produced before the Court on 21.8.2003 nor did his counsel appear on his behalf since on that day, his counsel reported no instructions and in such a situation since not even a petition u/sec.317 Cr.P.C. could be filed, the trial Court proceeded to examine P.W.1 on 21.8.2003 and terming the said act of the learned Judge as illegal, this petitioner has come forward to file the first criminal original petition.

24. However, it further comes to be known that the counsel was very well present inside the Court representing the other accused and the learned Judge stating that Section 29(5) of the POTA empowers the trial Court to examine the witnesses in the absence of the accused or his pleader, proceeded with the examination of P.W.1, which, according to the petitioner, cannot be held valid and the same is only an abuse of the process of law. In the above scenario, the petitioner quoting Section 4 of the Cr.P.C., according to which all offences under any other law subject to the special law, Code of Criminal Procedure, would have application, would state that since both the accused and his counsel are absent, Section 273 Cr.P.C. should be resorted to and therefore the Special Judge recording the evidence of P.W.1 in the absence of the petitioner in the first petition above is illegal.

25. At this juncture, it is relevant to consider the position of law on the subject. It should be borne in mind that the POTA is a Special Act and the Cr.P.C. is a general law and when there is a conflict between both these Acts, always the Special Act prevails over the general Act and no mention need be necessary that when the Special Act is found inconsistent, we

can seek recourse to the general Act.

26. So far as the subject in hand is concerned, the contention of the petitioner is that Section 29(5) of the POTA requires the presence of either the accused or the Pleader and when both are absent, Section 273 Cr.P.C. has to be followed. Section 29(5) of the POTA reads:

"Notwithstanding anything contained in the Code, but subject to the provisions of Section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination."

27. This provision of law is subject to Section 299 Cr.P.C., which reveals that it is dealing with recording of the evidence in the absence of the absconding accused and making use of the said deposition in evidence against him by the trial Court on its own accord and in cases of capital punishment, as directed by the High Court or the Court of Sessions. This Section does not have any application for the purpose of deciding the case in hand and therefore we can proceed with only Section 29(5) POTA.

28. So far as it is concerned with this Section, notwithstanding anything contained in the Code, the Special Court, as it thinks fit, for reasons to be recorded, proceed with the trial in the absence of the accused or his Pleader and record the evidence of any witness subject only to the right of the accused to recall the witness for cross-examination thereby meaning that excepting Section 299 of the Code, no other provision of the Code could include into such of the aspects dealt with under Section 29(5) of POTA under which the learned Judge is at liberty to record the evidence of any witness in the absence of the accused or his pleader. The terms 'accused or pleader' means not either the accused or his pleader but even in the absence of both, but only subject to the right of the accused to re-call the witness for cross-examination.

29. Regarding the recording of the evidence by the Special Court in this case on 21.8.2003 in the absence of the accused, the petitioner herein/A8, and his pleader reporting no instructions is concerned, the reasons recorded by the trial Court are perfectly within the parameters of the Section in which event, the accused is only given the right of re-calling the witness so examined for the purpose of crossexamination.

30. While such being the position of law, so far as it is concerned with the Special Act, there is no gain saying on the part of the petitioner in citing Section 273 Cr.P.C., which is dealing with 'the evidence to be taken in the presence of accused' and in fact, the procedure to be adopted in such circumstances having been more clearly spelt out by Section 29(5) of the Special Act POTA, recoursing to Section 273 Cr.P.C., as it is argued on the part of the petitioner is neither necessary nor warranted. Therefore, it is only safe to conclude that recording of the evidence of P.W.1 on 21.8.2003 by the Special Judge, in the absence of the accused and his

Pleader, is perfectly right and the only condition being that in the event the petitioner exercises his right to re-call the witness for cross-examination, the Special Court shall permit the petitioner and nothing else.

31. Coming to the second criminal original petition above, the point for consideration is the Special Court granting a long time of ten days, at the request of the prosecution, for filing the counter in their application in bail made in Crl.M.P.No.68 of 2003. The contention of the petitioners is that in view of their custody for a little over a year, the Special Court should not have granted ten days time for the prosecution for filing their counter. The petitioners' further contention is that when they are in judicial custody for such a long period, when the Special Judge was not inclined to adjourn the case when the accused was incapacitated and started recording the evidence of P.W.1, granted ten days time for the prosecution for filing their counter in the bail application submitted by them. Further explaining as to under what unfavourable circumstances remaining in judicial custody they have to fight out the case which is of the category of the rarest of rare cases, considering their application without any loss of time is absolutely necessary to secure the ends of justice. Citing Article 21 of the Constitution o f the India, the petitioners would further allege that it includes the right of a speedy trial to be observed at every stage particularly in the disposal of the bail application and dealing the same with hasty examination of witnesses is nothing but abuse of process of Court and they would ultimately pray to the relief seeking a direction to the Special Court to consider and dispose of the bail and thereafter proceed with the examination of the witnesses.

32. So far as conducting the trial proceedings are concerned, it is the domain of the trial Court, which, in the given circumstances, is expected to design its sphere of operation granting such time for compliance of the requirements so as to deliver the judgment as expeditiously as possible which shall be the hallmark of every trial proceeding, which responsibility is cast more on the Special Court in view of the importance of the case.

33. However, examination of P.W.1 in the absence of the accused or his Pleader, cannot, in any manner, be equated with the granting of a time of ten days for filing the counter by the prosecution in the bail application submitted by the petitioners herein and absolutely no damage has been caused to the rights of the petitioners in the examination of P.W.1 in the case in hand particularly in view of the fact that it was only the petitioner in the first application above, who was not able to appear nor his counsel, but all other accused particularly the other petitioners in the second application above and therefore the counsel who were present in the Court do not even plead that they are in any way prejudiced against the examination of P.W.1 nor could they make such a plea since in the second application, the petitioners' case is for a speedy trial.

34. Even for the 8th accused, who was absent that day, he is at liberty to re-call P.W.1 for effective cross-examination and therefore on account of such examination of the witness, the trial is only sped-up which is the hallmark of the petitioners in the second application and therefore there

is no point in these petitioners loitering much about the examination of P.W.1 on 21.8.2003 since they are absolutely not placed under any unfavourable circumstances. However the granting of a time of ten days for answering the bail application by the learned Judge appears to be a long period, still, in the considered opinion of the learned Judge, such time is required for the prosecution and hence has granted the said time. If the Special Judge has unnecessarily adjourned the case for the same purpose more than once in an unreasonable manner, then, such of the acts of the learned Judge could be termed unreasonable and therefore on an adjournment granted for the first time, the manner that the Special Judge has done in the first and the only time, cannot either be termed as unreasonable or arbitrary and for that matter,it would be unfair on the part of this Court to cause its interference dictating such terms to the trial Court not to grant such time or that it should only grant a time extending to certain days since such a direction issued would only mean a clear-cut interference made into the scheme of the conduct of trial by the trial Judge, who is the master to design the pattern of his work in his own style and fashion. It is more hideous to pass an order directing the trial Court not to examine any witness till such time that the bail application of the petitioners is decided as it is sought for on the part of the petitioners in the second criminal original petition.

35. In the case cited by the petitioners counsel reported in 1987 L.W. Crl.419, in a case of murder, a request has been made by the accused wanting to engage another counsel due to illness of the previous counsel and the learned Sessions Judge refused permission and in the absence of the counsel for the accused, recorded the evidence of 12 witnesses in chief examination that too in a case of capital sentence wherein adhering to the facts of the said case, the learned Judge of this Court has decried the tendency of the Court of Sessions, whereas it is not due to the ill-health of the counsel in the case in hand, but the counsel is present and reported no instructions for reasons unknown as though only on the date of hearing, if the accused is brought to the Court, he would receive instructions to conduct the proceedings and therefore the parameters held in the said case cannot be applied to the facts of the case in hand.

36. For all the above discussions held, both the above criminal original petitions do not merit acceptance and they become only liable to be dismissed and are dismissed accordingly.

In result, both the above criminal original petitions are dismissed.

Consequently, Crl.M.P.Nos.8025 and 8026 of 2003 are also dismissed.

Index: Yes
Internet: Yes

Rao

To

1.The Presiding Officer,
Special Court under POTA,
Poonamallee,
Chennai.

2.The Deputy Superintendent of Police,
`Q' Branch CID.,
Kalaimagal Nagar,
Madurai-625 017.

3.The Public Prosecutor,
High Court, Madras.